

IN SENATE OF THE UNITED STATES.

JUNE 25, 1838.

Submitted, and ordered to be printed.

Mr. RUGGLES submitted the following

REPORT :

[To accompany Senate Bill No. 32.]

The Committee on Patents and the Patent Office, to whom was referred a bill to amend the act entitled "An act to amend the several acts respecting copyright," together with sundry petitions in favor of an international copyright law, and numerous remonstrances against it, report:

The committee have given to the subject all that consideration which the urgent appeals for such an enactment on the one hand, and the still more urgent remonstrances against it on the other, appeared to claim for a question which has excited so much interest.

The petition of nearly sixty British authors, some of whom are favorably known on this side of the Atlantic, asks that the exclusive right of their respective writings may be secured to them in the United States. This is sought as a matter of justice, to secure to them in this country a remuneration for their authorship, and to protect their literary reputation from the injury it is subject to from altered and incorrect editions of their works. They complain that deep and extensive injuries have been inflicted on their reputation and property, and on the interests of literature and science, which ought to constitute a bond of friendship between the United States and Great Britain; that the works of British authors are extensively read throughout the United States, while the profits arising from their works may be wholly appropriated by American booksellers; that their works are liable to be mutilated and altered by any persons who may have an interest in reducing the price of the work, or in conciliating the principles or prejudices of purchasers; that they have recently made an effort in defence of their literary reputation and property, by declaring a respectable firm of English publishers in New York to be the sole authorized possessors and issuers of their works, and by publishing, in certain American newspapers, their authority to this effect; and that they have been defeated in their object by citizens of the United States, who have unjustly published their works for their own advantage.

They also say, that American authors are injured by the non-existence of the desired law, from the discouragement afforded to native authors, when publishers can provide themselves with unprotected productions without paying for copyright; and that the American public is also injured,
Blair & Rives, printers.

not only in the discouragement afforded to native authors, but from the uncertainty now existing as to whether the books presented to them as the works of British authors, are the actual and complete productions of the writers whose names they bear.

The committee do not deem it necessary to argue the question, which has been so much discussed, whether an author has a property in his written and published productions, by natural right, which society is bound to protect. It will, perhaps, be sufficient to admit, that in most cases there will be found equitable considerations, constituting strong claims for aid and protection in some form, to those from whose intellectual labors mankind derive a benefit. Partly with reference to such considerations of justice to authors, and partly with a view to the advancement of literature and science, all civilized nations have established copyright laws, securing to authors a special property in their productions, generally giving to them for a limited time the exclusive privilege of publishing and republishing their works.

In England, authors had, by common law, a perpetual copyright, until the statute of Anne, which was held to restrict that right to the statutory term of fourteen years; or to twenty-eight years, if the author outlived the first term. Since that period, copyright in England as elsewhere has been defined, limited, and protected by special enactments, on which alone it rests. The right of the author as thus established and defined, is *property* of a peculiar character, not absolute but special, subject to conditions and limitations. As between nations it has never been regarded as property standing on the footing of wares or merchandise, nor as a proper subject for national protection against foreign spoliation. It has been left to such regulations as every Government has thought proper to make for itself, with no right of complaint or interference by any other Government. *International* copyright, in strict sense, has no existence; although in some instances voluntary legislation has extended to foreign authors, the same rights that are enjoyed by citizens.

So far, then, as the practice and usage of nations go, this Government is under no obligations to extend to the subjects of any foreign power exclusive copyright privileges. It belongs to that class of interests which every Government will protect and regulate, in a manner to secure the greatest benefit to its own citizens, giving, at the same time, a just consideration to what is due to others.

And the true ground on which the claims to copyright protection are based, considered as a domestic regulation, is that it tends to encourage and reward talent, and to prompt and stimulate genius to those intellectual efforts which, when made public, afford instruction, improvement, and rational enjoyment, by means of which society is benefited.

Our laws on this subject were revised, and the term of exclusive copyright enlarged and extended, in 1831. The act of February 3d of that year repealed the two former acts, and secured to citizens and *resident* authors the sole right and liberty of printing, reprinting, publishing, and vending, their writings, maps, charts, musical compositions, prints, cuts, and engravings, for the term of twenty-eight years, with a right of renewal for fourteen years longer, provided the author be living at the end of the first term; or, being dead, shall have left a widow or children, any one of whom shall be then living.

To an extension of copyright to non-resident foreigners objections are made in behalf of a numerous class of citizens, embracing booksellers, paper makers, printers, bookbinders, type founders, and others whose interests are supposed to be involved in this question. The number of persons employed in the United States in the various branches connected with book making and periodical publication has been estimated at two hundred thousand, and the capital employed in those branches at from thirty to forty millions of dollars. Some of these branches give employment and support to a great number of women and children.

Here are interests too extensive and important to be overlooked. It is asserted by the remonstrants that they would be seriously and ruinously affected by the proposed measure, in its inevitable tendency to divert labor and capital from its accustomed channels, and to derange an extensive and valuable business, which it should be the cherished policy of the Government to foster and protect. They assert, not without some good reason for apprehension, that it would materially lessen an important manufacture, and take employment from our own citizens and transfer it to foreigners, to the great discouragement of American industry. Books to a considerable amount are annually imported from Great Britain and France, and hereafter, it may be expected, the importations will be greatly augmented by the operation of the act providing for the reduction of duties. American capital and labor employed in this business, when it shall cease to have the protection of the existing tariff, will necessarily come into severe competition with *foreign* capital and labor; and if we give the latter the additional advantage of copyright protection against a republication in this country, a valuable portion of the bookmaking business, with the extensive employments and manufactures connected with it, will inevitably be transferred from our own country to Europe. Large editions of books can be printed at a much less average cost than small editions; and when we take into consideration the great abundance of capital and the cheapness of labor in England, it cannot be doubted that the printing of foreign books for the American market would, to a great extent, be engrossed by foreign publishers, especially as the power and controlling influence of the great publishing houses in London, over the literary market in that country, would secure to them a monopoly, also, of American copyright for the writings of British authors. It is true, the proposed bill provides for the printing of the first edition in this country; but that does not remove the objection. The memorial of foreign authors states that there is already established in New York an English house of publication, to whom they have endeavored to secure the exclusive benefit of publishing their literary productions, "by declaring them to be the sole authorized possessors and issuers of the works of the said petitioners; and by publishing in certain American newspapers their authority to this effect." The means by which their exertions to establish in the hands of this "English house" in New York a monopoly in the republication of English books have been defeated, they complain of as a "grievance," against which "they at present have no redress." They only want the aid of an act of Congress to enable them to monopolize the publication here as well as in England, of all English works for the supply of the American market!

It is perceived that, by the enactment of a copyright law in favor of British authors, the profits of trade and manufacture, and all the benefits

arising from encouragement to national industry, would be, for us, on the wrong side of the ledger.

It may be asked, if we should not have an offset in similar advantages under the copyright law of Great Britain. The answer is found in the significant inquiry of the British reviewer—"Who ever reads an American book?" The difficulty and expense of bringing an American work into notice with the British public are entirely insurmountable by American authors generally. On the contrary, the works of British authors have credit here at once on the faith of British reviewers, and obtain a ready and extensive circulation. It is stated in a recent publication that two hundred and fifty copies of Marshall's Life of Washington, revised and condensed some six years since by the author, were sent to England by one of our publishing houses, whose bookselling connexions there were extensive, and offered to the trade at about one-fourth of the price of the first edition. The books remained in London two years, and fifty copies only were sold on a long credit. The remaining two hundred copies were sent back saddled with heavy expenses. This is a single instance from many, illustrating how little demand there is in England for American literature.

In addition to this difficulty of access to the favor of a British public, and the other disadvantages experienced by American authors and publishers, the British Government has taken care to protect their own publishers by such duties as greatly discourage competition from abroad. With this we have no more right to find fault than British authors and publishers have to complain of the advantages possessed under our laws by American publishers.

Another very serious objection to extending the exclusive privileges of copyright to British authors, is to be found in the inevitable effect it will have to enhance the price of books to American readers, and, consequently, to circumscribe their sale and that general diffusion of knowledge so greatly promoted by making it easily and cheaply accessible to all classes of our citizens. The annexed comparison of prices of some of the standard works, issued from the British press and from the American press,* serves to illustrate the opposite tendency of our free-trade system of competition in book making, and the exclusive and monopolizing system into which the business has fallen in England. The difference in prices is partly attributable to the style of publication, and not a little to the general effect of copyright protection to the great mass of new publications in England, in giving to the great and influential publishing houses there a control over both publication and prices. Give to the same British publishing houses, by an extension of our copyright system, a similar control over the book trade in this country, and English prices and style of publication would soon begin to be *fashionable* here. The favored publishers, secured from competition, would doubtless find, in the enhancement of price, a compensating profit under a restricted sale.

High prices are attended with less injurious effects in England than in

	English.	American.
*The Bible, common edition - - - - -	\$1 00	\$0 50
Scott's Family Bible - - - - -	40 00	7 50
Henry's Commentary - - - - -	35 00	10 00
Nicholson's Architecture - - - - -	23 00	4 00
Bridgewater Treatises - - - - -	31 00	14 00
An ordinary novel, about - - - - -	5 00	75
Scott's Napoleon - - - - -	37 00	2 25
D'Israeli's Curiosities of Literature - - - - -	5 00	1 50

the United States. There the population is more dense. They have more public libraries conveniently and generally accessible to those who cannot afford to purchase books. In this country the population is comparatively sparse, less clustered into manufacturing villages, and of course more remote from public libraries. This disadvantage is compensated by the greater number of private libraries, which the cheapness of books enables the industrious farmers, mechanics, and tradesmen to procure, for the entertainment and intellectual improvement of themselves and their families. The multiplication of cheap editions of useful books, brought within the reach of all classes, serves to promote that general diffusion of knowledge and intelligence, on which depends so essentially the preservation and support of our free institutions. A policy which should have a tendency to turn these fructifying streams into more exclusive channels, would find little justification in what is supposed to be due to foreign authors.

It would be unjust to infer, from the view herein taken of this subject, that we are indifferent to the interests of literature. On the contrary, we would extend every possible encouragement, consistent with what is due to other interests, to those who devote their time and talents to literary pursuits. But literature itself is only valuable as it tends to improve and bless mankind. It should not, therefore, be confined to exclusive channels, but diffused and spread throughout the whole mass, as a medium of intelligence, of refinement, of correct taste, pure morals, sound principles, and elevated sentiments; shedding upon the whole face of society the beams of light and knowledge and intellectual improvement.

While the further extension of copyright to British authors would, as has been shown, raise the price to the American readers of valuable and protected works, ordinary productions, not worth monopolizing; the privilege of publishing which could be had for a trifle, would be left to competition among a more numerous and humbler class of publishers. The consequence would be that worthless books, whose circulation should rather be prohibited than encouraged, would, from their comparative cheapness, find their way into every hamlet and cottage in the country, while more useful and valuable books, in the hands of monopolizing publishers, would, from their high price, have but a restricted sale. What consideration could compensate for a result so injurious in its effects upon the moral and intellectual character of the people?

An extension of copyright is claimed, also, on the score of reciprocity. But that principle is inadmissible, except where it is attended with equal advantages on both sides. In addition to the inequality already mentioned, it is proper to advert to the difference in value of copyright under the British and American copyright law. In respect to *time*, calculating the chances of life and of issue, theirs is one-third shorter than ours; and our law exacts of the author but one copy, while that of Great Britain imposes a tax of five, which is complained of there as an unjust and severe exaction.

It is said the principles on which the privileges of the patent laws have been extended to foreigners, should sustain their application, also, for copyright. But inventors and authors stand on somewhat different ground. It is rarely that an invention is brought out at first in that state of perfection which enables the public to put it at once into practical use in the most beneficial manner. The ingenuity of the inventor is generally held in requisition to improve upon and perfect his invention long after the publication of his patent; and no little expense and perseverance are necessary to

convince the public of its utility, and to introduce it into general use. A great proportion of the most valuable inventions pertaining to the arts, would lie dormant and useless, but for the continued application of the inventor's peculiar talents and skill to perfect them by modifications and improvements, and his continued agency in extending a knowledge of their practical uses and advantages. The public, in most cases, can derive but little benefit from a publication merely of the principles of an invention. Hence the policy, and oftentimes the necessity, of making the inventor, or some one else, interested in introducing it into general use throughout the country, and in teaching others how to apply its principles to practical usefulness.

The *early* introduction and general adoption of labor-saving inventions, and improvements in the arts and other branches of industry, is a public benefit. To secure that advantage, we extend to foreigners the privilege of our patent laws, requiring, as a condition, that, within a specified period, they shall "put and continue on sale to the public, the invention or discovery for which the patent is granted." The only regard paid to the principle of reciprocity in our patent laws is, in imposing an equal tax upon foreign inventors, that is laid on Americans by other Governments. In England, France, Belgium, &c., patents are granted to the first *introducer* of a foreign invention into use in the country, who is, in that way, compensated as for a public service, and made interested in disseminating a knowledge of the mode of applying it in the most advantageous manner. If Congress possessed the constitutional power to grant patents to any but inventors themselves, the interest of the country would doubtless be promoted by following this example of other nations. The advantages which our country would derive from encouraging, in that way, the introduction of foreign improvements in labor saving machinery, would overbalance, by far, any supposed disadvantage arising from extending patent privileges to the citizens of other countries. Regarded in the light of reciprocity, merely, (which, however, does not enter essentially into the motives of Governments in any country, in granting patents to foreigners,) we should find the principle practically carried out in our favor. American ingenuity in the arts and the practical sciences, would derive at least as much benefit from international patent laws, as that of foreigners. Not so with authorship and book-making. The difference is too obvious to admit of controversy.

Among the memorials referred to the committee, are three bearing the signatures of a number of highly respectable literary gentlemen, citizens of the United States, asking for the extension of copyright to foreign authors, on the ground of justice to them, and of the benefit which would thereby accrue to American authors. They complain of the competition they are obliged to encounter, in the extensive publication and sale in this country, of cheap editions of foreign books. They suppose the effect will be to enable American authors to sustain higher prices, proportionate to the increase of prices, which monopoly in the publication would secure for foreign works. But is it certain that they would be materially benefitted by increase of prices? It is true that the sale of foreign books would thereby be greatly checked. And it is also true that the sale of American books would be equally diminished, while the aggregate of profits might not be materially affected. A few years since some of the principal publishers and booksellers united in an endeavor to keep up and enforce high prices

for many of the most valuable works, without the aid of copyright. They succeeded for a long time by a sort of *trades union*. But at length a spirit of competition and free trade broke through the restraint, and brought down prices from 30 to 75 per cent. Since that time, the book trade has undergone a great change. While prices have fallen, sales have multiplied ten fold, and the most salutary results have been experienced. Valuable and instructive works have become more generally accessible to all classes of citizens. The light of intelligence has become more universally disseminated, and we are manifesting more generally and emphatically the character of a reading people.

While this has been going on, experience has shown that the gains of publishers and booksellers, in the aggregate, have been increased, rather than diminished, and that their interest, in that respect, is coincident with public policy. They ask no change of the law, but protest against it.

It is difficult to perceive how the interest of authors would be differently affected by a more extensive sale of their writings, encouraged by moderate and reasonable prices. If they hold the copyright in their own hands, their interest is the same; if they dispose of it to publishers, its value is determined by the profits of publication.

As to the *competition* of which the American petitioners complain, it may be well doubted whether it exists to any considerable degree. It must necessarily be limited to works on the same subject and of similar character. Their number is comparatively very small. Indeed, competition of this sort is far from being undesirable. Books, it is quaintly said, sell one another. Every book that is read makes a market for more even of the same character. Mind, unlike matter, hungers upon that on which it feeds. It is quite apparent that all unfavorable competition is between American and British *publishers*, and that it does not exist, certainly to any considerable extent, between American and British *authors*. Indeed, the mind is induced to cast about for the means of reconciling the united and harmonious application of American and foreign authors for a law to relieve the former from injurious competition by the latter, in our literary market. It can be found only in the result it is calculated to produce, the taxing of the reading public of this country for the joint benefit of both, as the reading public is taxed in England.

Viewing the subject in this light, the committee have been unable to find sufficient reason for recommending the passage of the bill referred to them, or any other extending exclusive copyright privileges to foreign non resident authors. They are persuaded that the benefit of such a law would enure principally to foreign publishers and manufacturers, to the great discouragement of our own, and that authors on either side of the Atlantic would derive much less advantage from it than might at first view be apprehended. Nor are the committee satisfied that the public interest requires that the Executive should be authorized to negotiate for an *international* copyright. No such authority has yet been conferred on the treaty-making power in England or France. The subject has been recently agitated in the British Parliament, where it was treated as one not likely to meet with favor except from those nations which would derive an equal and reciprocal benefit from its adoption. It was viewed there, as the committee have here considered it, not with reference solely to the interest of authors or of literature, but with a proper regard, also, for other important interests, which no just or wise Government will overlook.

